

IN THE MATTER OF:

E.Z. Chemical Company

Leonard Goldfine, Edmund Zakrocki,
and E. Z. Chemical Company

RESPONDENTS

Proceeding Under Sections 104(e)
and 106(a) of the Comprehensive
Environmental Response, Compensation,
and Liability Act of 1980, 42 U.S.C.
§§ 9604(e) and 9606(a) as amended
by the Superfund Amendments and Re-
authorization Act of 1986, Pub. L.
No. 99-499, 100 Stat. 1613 (1986).



SDMS DocID 2051461

Docket No. III-90-07-DC
Administrative Order

I. JURISDICTION

1.1 This Administrative Order ("Order") is issued pursuant to the authority vested in the President of the United States by Sections 104(e) and 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9604(e) and 9606(a) as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986), ("CERCLA"), delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, 52 Fed. Reg. 2923 (January 29, 1987), and further delegated to the Regional Administrators of EPA. This Order pertains to property located at 48-60 Laurel Street, Philadelphia, Pennsylvania. The property will hereinafter be referred to as "the Site", or "the Facility" and is further described in Section III below.

1.2 This Order is issued to Leonard Goldfine, Edmund Zakrocki, and E.Z. Chemical Company the above-captioned respondents ("Respondents"). The actions taken pursuant to this Order shall be consistent with the National Oil and Hazardous Substances Contingency Plan, 40 C.F.R. Part 300 ("NCP"), and CERCLA.

II. STATEMENT OF PURPOSE

2.1 In issuing this Order, the objective of EPA is to ensure that a proper removal action is conducted, as defined in Section 101(23) of CERCLA, 42 U.S.C. §§ 9601(23), to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site, as hereinafter described and to properly dispose of hazardous substances located there.

III. FINDINGS OF FACT

3.1 Laurel Street Corporation ("Laurel") and 950 Canal Street Corporation ("950 Canal") are the title holders of record for two parcels of land, designated as "B" and "C" respectively (collectively "the Facility" or "the Site"), located at 48-60 Laurel Street in Philadelphia, Pennsylvania. Laurel has owned parcel B since September 17, 1984. 950 Canal has owned parcel C since November 1, 1977.

3.2 The Site is approximately 1.5 acres in size and is located in a heavily industrialized urban area. Philadelphia's elevated commuter train line and Interstate-95 lie two blocks from the Site. Adjacent to the Site is a meat processing plant. South of the site at 1060 Delaware Avenue is an apartment complex.

3.3 Leonard Goldfine was the sole stockholder, director and officer of Laurel and 950 Canal during the period October 27, 1977 through March 17, 1987 (the "relevant time period") in which Laurel and 950 Canal owned parcels B and C.

3.4 During the relevant time period, the nature of the business conducted by Laurel and 950 Canal was to lease the Facility to others. Leonard Goldfine was aware that the lessees of the Facility engaged in businesses involving the handling of chemicals. The leases for the premises provided that the permitted uses were selling, buying, blending, packaging, storing and otherwise legally dealing "in chemicals of all kinds."

3.5 From at least May 17, 1985 until October 1, 1986, a lessee, Packaging Terminals, Inc. ("Packaging") was a tenant on parcels B and C. Between May 17, 1985 and October 1, 1986, EZ Chemical Company ("EZ Chemical") and Edmund Zakrocki (the president of EZ Chemical), through an agreement with Leonard Goldfine and Packaging dated May 17, 1985, operated the business of Packaging on parcels B and C, which involved the selling, buying, blending, packaging and storing of chemicals of many kinds. Leonard Goldfine was aware of the nature of EZ Chemical's and Packaging's activities on parcels B and C during this period. According to records from the Philadelphia Fire Department, the chemical storage operations of these tenants was conducted in a very poor manner. Fire Department records reveal numerous investigations of complaints of spills and/or releases of chemicals at the Site during the time that Packaging and EZ Chemical leased the facility.

3.6 From October 1, 1986 until at least March 17, 1987, E.Z. Chemical was a tenant on parcels B and C where it, like Packaging, operated a business involving the selling, buying, blending, packaging and storing of chemicals of many kinds.

Leonard Goldfine was aware of the nature of EZ Chemical's activities on parcels B and C during this period.

3.7 On numerous occasions during the 1980's the City of Philadelphia issued citations regarding the improper storage of chemicals at the Site. For example, on February 3, 1987, a summons was issued from Philadelphia Municipal Court to Leonard Goldfine and Jean Goldfine to remove 500 drums of chemicals from the Site.

3.8 Pursuant to an agreement dated May 17, 1985 between Leonard Goldfine, Packaging, EZ Chemical and Edmund Zakrocki, Leonard Goldfine was personally involved in the sale of chemicals abandoned on the Site by a prior lessee.

3.9 The May 17, 1985 agreement, described in paragraph 3.8 above, was created because Packaging had defaulted on certain leases to, among others, Laurel and Goldfine. This surety agreement was executed to ensure payment to Laurel and Leonard Goldfine personally. Moreover, under the terms of the agreement, Packaging agreed to supply Leonard Goldfine with an inventory of chemicals that had been "abandoned by a prior lessee" at the Site. The agreement required Packaging and E.Z. Chemical to undertake the sale of the abandoned chemicals. Under the terms of the agreement, Leonard Goldfine is to receive one-half of the gross sales prices of the chemicals. The agreement is signed by Leonard Goldfine in his individual capacity.

3.10 Leonard Goldfine maintained an office in a trailer located directly next to, and in full view of, the Site during the relevant time period in which Laurel and 950 Canal owned parcels B and C and leased the Facility to operators Packaging and EZ Chemical.

3.11 On March 17, 1987, EZ Chemical and Edmund Zakrocki purchased all of the outstanding shares of Laurel and 950 Canal from Leonard Goldfine.

3.12 E.Z. Chemical Company and Edmund Zakrocki are the present owners and operators of the Site.

3.13 On April 4, 1989 EPA's Removal Response Section was notified by the Philadelphia Fire Marshal of a potential threat to public health and welfare and the environment from the Site. The Philadelphia Fire Department requested that EPA inspect the Site immediately.

3.14 On April 5, 1989 EPA initially inspected the Site along with representatives of the Philadelphia Fire Department, Philadelphia Department of Licensing and Inspection, the City Solicitor's Office and the City Managing Director's Office. Deplorable conditions were found on-site. Haphazard storage of

approximately 20,000 drums and deteriorated fiber, plastic, and metal containers were observed which contained industrial products or wastes. Drum labels indicated that incompatible materials were present without proper segregation. These incompatible materials included chemicals such as ethyl ether, monochlorobenzene, trichlorobenzene, phenol, sulfuric acid, ethylene dichloride, ortho-dichlorobenzene, methylene chloride, trichloroethane, toluene, benzene and methyl ethyl ketone (MEK) all of which are hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) because they are listed at Table 302.4, 40 C.F.R. § 302.4. Areas of spillage and leaking containers were observed and documented. Thirty-four storage tanks were identified on-site. Eight of the tanks were empty; the 26 remaining tanks contained solvents, corrosives or plasticizers.

3.15 On April 5, 1989, the Philadelphia Department of Licensing and Inspection served EZ Chemical with a Cease, Desist, and Evacuate Order citing the Facility as a fire and explosion threat due to the haphazard storage of incompatible chemicals.

3.16 Since being served on April 5, 1989 with the Cease, Desist and Evacuate Order from the City of Philadelphia as described in paragraph 3.15 above, E.Z. Chemical and Edmund Zakrocki have essentially ceased operations at the Site.

3.17 During April 6 through 8, 1989, EPA entered into negotiations with E.Z. Chemical and Edmund Zakrocki regarding access to and cleanup of the Site. Pursuant to a written consent agreement, EPA was granted access to the Site by Edmund Zakrocki. Edmund Zakrocki was notified of his potential liability under CERCLA with regard to the Site. On April 6, 1989 Mr. Zakrocki, through his counsel, was offered the opportunity to finance or perform removal actions at the Facility, but he declined stating financial reasons.

3.18 On April 7, 1989 EPA activated Superfund monies to finance cleanup at the Site and the agency began emergency actions to abate, minimize, stabilize, mitigate, or eliminate the threat of fire or explosion at the Site.

3.19 On April 7, 1989, EPA determined that hazardous substances at the facility, including chemicals in a second floor laboratory and scattered elsewhere throughout the Site:

- i. were an imminent threat to public health and welfare and the environment;
- ii. posed a threat of release;
- iii. posed a threat of fire or explosion; and

- iv. must be removed in order to abate the endangerment to public health and welfare and the environment.

3.20 On April 7, 1989 EPA began conducting emergency removal activities at the Site to abate the existing fire and explosion threat. These actions included segregating the large quantities of drums on Site, sampling and segregating the numerous vessels and containers in the laboratory and elsewhere, and implementing a 24 hour security watch and general housekeeping.

3.21 On or about April 18, 1989 EPA again notified E.Z. Chemical Company and Edmund Zakrocki of their potential liability under Section 107(a) of CERCLA. EPA determined at that time, however, that neither E.Z. Chemical nor Edmund Zakrocki could finance or perform proper cleanup response actions at the Site. Indeed, when EPA initially inspected the Site, as described in paragraph 3.14 above, E.Z. Chemical's property was subject to a judgment sale by the Sheriff of Philadelphia County in regard to execution on a five thousand dollar (\$5,000) judgment.

Ed
interview
11/6/89

* 3.22 In addition to the improperly stored chemicals described in paragraph 3.14 above, EPA's investigation at the Facility revealed that since sometime before May 17, 1985, when EZ Chemical and Edmund Zakrocki began operations on the Site, shock sensitive and unsegregated incompatible hazardous substances have been stored in various containers and storage vessels (the "laboratory chemicals") in a second floor laboratory, and elsewhere, throughout the Site. These laboratory chemicals remain on-site.

3.23 The laboratory chemicals described in paragraph 3.22 above, contain substances such as uranyl nitrate, sodium azide, sodium fluoride, sodium cyanide, pyridine, nitrobenzene, chromic acid, antimony pentachloride, selenium and sodium nitrite, all are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), because they are listed at 40 C.F.R. Part 302, Table 302.4 (1987).

3.24 The laboratory chemicals present a threat of fire and explosion. For example, sodium azide is a poison which is unstable (it reacts violently with copper, lead and water) and an explosive. Sodium azide is also a mutagen which affects the central nervous system. Sodium cyanide is a poison. As a solid, sodium cyanide produces poisonous vapors upon contact with acid, water or steam.

3.25 Pyridine, nitrobenzene and sodium nitrite are very dangerous fire hazards when exposed to heat or oxidants.

3.26 As of December 13, 1989 EPA has removed approximately 14,000 drums and containers of materials contaminated with

hazardous substances from the Site. EPA has also taken appropriate housekeeping actions to lessen the threat of fire and explosion. In addition, upon notice from EPA, numerous persons have voluntarily removed their chemical products which had been stored on Site.

3.27 Notwithstanding the removal actions described in paragraph 3.26 above, hazardous substances still pose a threat of release at the Site. Some 2,100 drums remain on Site as well as the approximately 10,000 bottles, vessels, and containers of laboratory chemicals described in paragraphs 3.22 through 3.25 above.

3.28 The chemicals remaining on Site pose a threat to public health and welfare and the environment as described above.

3.29 On September 7, 1989 EPA notified Leonard Goldfine of his potential liability under Section 107(a) of CERCLA, and offered him the opportunity to negotiate with the Agency concerning the proper disposal of the remaining chemicals at the Site. Mr. Goldfine was given seven (7) days after the receipt of the notice letter to contact EPA in order to negotiate a removal action. As of the date of the issuance of this Order, Mr. Goldfine has not contacted EPA regarding a willingness to finance or conduct the disposal activities still required at the Site.

IV. CONCLUSIONS OF LAW

4.1 The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4.2 Leonard Goldfine is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.3 Edmund Zakrocki and E.Z. Chemical are "persons" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

4.4 "Hazardous substances," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), have been released at the Site and are currently present there.

4.5 The presence of hazardous substances at the Site and the past, present and/or potential migration of hazardous substances from the Site constitutes an actual and/or threatened "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

4.6 Leonard Goldfine as sole stockholder, director and officer of Laurel and 950 Canal, and through his personal involvement and participation with the Site during the relevant time period, was an "owner or operator" of the Site at the time hazardous substances were disposed of there, within the meaning of Section 107(a)(2) CERCLA, 42 U.S.C. § 9607(a)(2).

4.7 The abandonment or discarding of containers, and other receptacles containing any hazardous substance, pollutant or contaminant in the second floor laboratory and elsewhere, throughout the Site, is a "release" as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), which took place during the time in which Leonard Goldfine owned or operated the Site.

4.8 Leonard Goldfine is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). He is also liable for carrying out the provisions of this Order under Section 106 of CERCLA, 42 U.S.C. § 9606.

4.9 Edmund Zakrocki and EZ Chemical are liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). They are also liable for carrying out the provisions of this Order issued pursuant to Sections 104(e) and 106 of CERCLA, 42 U.S.C. §§ 9604(e) and 9606.

V. DETERMINATIONS AND REMOVAL RESPONSE ORDERED

Based on the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this Order, EPA has determined that:

5.1 The actual and/or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment.

5.2 The actions required by this Order are necessary to protect the public health and welfare and the environment.

5.3 The Site remains a fire and explosion threat.

5.4 Based upon the foregoing, it is hereby Ordered that Leonard Goldfine implement and complete a removal of the laboratory chemicals which remain at the Site in accordance with the requirements and schedule specified below.

5.5 It is hereby further Ordered that Edmund Zakrocki and EZ Chemical grant access to the Site for the purposes of conducting any activity authorized by or related to this Order, CERCLA, or the NCP in accordance with the requirements specified below.

VI. PARTIES BOUND

6.1 This Order shall apply to and be binding upon the Respondents, their agents, successors, and assigns and upon all persons, contractors and consultants acting under or for them. No change in ownership or corporate or partnership status relating to the Site or the Respondents will in any way alter the status of the Respondents or their responsibilities under this

Order.

6.2 Respondent Leonard Goldfine shall provide a copy of this Order to all contractors, subcontractors, laboratories and consultants retained to conduct any portion of the work performed pursuant to this Order, and shall condition such contracts on compliance with the terms and conditions of this Order.

6.3 In the event of any change in ownership or control of the Site, Edmund Zakrocki and E.Z. Chemical shall notify the EPA in writing at least thirty (30) days in advance of such change and shall provide a copy of this Order to the transferee in interest of the Site, prior to any agreement for transfer.

VII. NOTICE TO THE STATE

7.1 Notice of issuance of this Order has been given to the Commonwealth of Pennsylvania, pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

VIII. WORK TO BE PERFORMED

8.1 Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §9606(a), Respondents shall commence and complete performance of the following measures within the time periods specified.

8.2 Respondent Leonard Goldfine shall retain a qualified contractor to conduct the necessary response activities identified in this Order. Before work is begun under this Order and the EPA approved statement of work, Leonard Goldfine shall notify EPA in writing regarding the identity and qualifications of the person or persons who will be primarily responsible for carrying out the terms of this Order. All supervisory personnel, contractors and/or subcontractors performing cleanup activities at the Site shall meet the necessary Occupational Safety and Health Administration (OSHA) requirements as defined in 29 C.F.R. § 1910.120. The supervisory personnel, contractors, and subcontractors are subject to approval by EPA. EPA may disapprove the use of any supervisory personnel, contractor and/or subcontractor if EPA believes they are not qualified to perform the response work. In the event of a disapproval by EPA, Leonard Goldfine shall notify EPA within five (5) days of receipt of EPA disapproval of the supervisory personnel, contractor or subcontractor as to who will replace the one disapproved by EPA.

8.3 Respondent Leonard Goldfine or his duly designated agent shall contact the EPA Enforcement Project Manager (EPM) at the telephone numbers listed in paragraph 9.1 below within two (2) business days of receipt of this Order to obtain from EPA information necessary for him to complete the work required by this Order. At this time Respondent Leonard Goldfine may request a conference with EPA as set forth in paragraph 19.2 below.

8.4 Within seven (7) business days after receipt of this Order, Respondent Leonard Goldfine shall submit to EPA for review and approval a complete and detailed Statement of Work ("SOW"), a Health and Safety Plan, and a schedule for completion of the work set forth in paragraph 8.5 below as expeditiously as practicable consistent with safety and environmental conditions. The SOW shall be consistent with the NCP, 40 C.F.R. Part 300, and shall be subject to approval by EPA according to paragraph 8.10 below.

8.5 (a) The Work shall consist of the removal, transportation and disposal of all bottles, containers, vessels or other receptacles containing hazardous substances, pollutants, or contaminants or contaminated with hazardous substances, pollutants or contaminants, which were located on the second floor of the building on Site, which are now stored in a warehouse on Site, and that are scattered throughout the Facility (collectively the materials to be removed are herein referred to as the "laboratory chemicals."). As discussed in paragraph 3.27 above, there are about 10,000 containers of laboratory chemicals remaining on Site. As described in paragraph 8.3 above, EPA shall provide Respondent Leonard Goldfine with information concerning which laboratory chemicals are to be removed from the Site. These laboratory chemicals remaining on Site must be disposed of properly.

(b) In order to dispose properly of the laboratory chemicals, Respondent Leonard Goldfine shall:

- i) ensure that the laboratory chemicals are transported by a licensed transporter to a designated facility capable of handling the substances under applicable Federal law, including the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 et seq. The disposal facility must be in compliance with all applicable Federal, State and local requirements.
- ii) ensure that the laboratory chemicals are manifested and handled in accordance with all Federal, State, and local laws; and
- iii) not remove any materials containing or potentially contaminated with hazardous substances from the Site except in conformance with the terms of this Order and any applicable Federal, State or local laws or regulations.

8.6 (a) With regard to those laboratory chemicals removed from the Site which are treated or disposed of offsite, Leonard Goldfine shall submit to the EPA within seven (7) days of the completion of such treatment or disposal, copies of all manifests

and other documents in its possession which were generated in connection with the transportation, storage, treatment, and/or disposal operations.

(b) With regard to those laboratory chemicals removed from the Site for use or reuse offsite, the Respondent Leonard Goldfine shall submit to the EPA within seven (7) days of delivery of such substances to the site at which they will be used or reused, copies of all manifests and other documents in his possession which were generated in connection with the transportation, storage, treatment, and/or use or reuse operations.

8.7 The Site Health and Safety Plan shall include provisions for Site security, fire protection and worker safety.

8.8 Leonard Goldfine shall implement the work activities described in Paragraphs 8.4 and 8.5 within seven (7) days of EPA approval of the Statement of Work.

8.9 The Statement of Work shall outline the work required to conduct the necessary response actions and shall include, but not be limited to, the following: the protocols, practices and procedures to be used; the equipment and personnel to be used; the specific items to be addressed in each action; the potential exposures to hazardous substances and potential further releases which may occur and the actions to be taken to mitigate them; the safety procedures necessary for each activity; and an explanation of how these actions are consistent with CERCLA, the NCP, public and worker safety and overall Site cleanup objectives. All actions shall be taken in such a manner as to mitigate to the extent practicable or to eliminate any present or future releases of hazardous substances from the Site.

8.10 The EPA shall review the Statement of Work and notify Leonard Goldfine of EPA's approval or disapproval of the Statement of Work. In the event of disapproval, the EPA shall specify the deficiencies in writing. Respondent Leonard Goldfine shall respond to and correct the deficiencies identified by EPA and resubmit the Statement of Work to EPA within five (5) business days of receipt of EPA disapproval. If the resubmitted Statement of Work is unacceptable to EPA, EPA retains the right to submit its own modifications to Leonard Goldfine and require him to implement such modifications, or to perform the response action and seek reimbursement of its costs from him and or take any other action authorized by law.

8.11 Upon receipt from EPA of written approval of the Statement of Work, Respondent Leonard Goldfine shall immediately begin implementation of the Statement of Work according to the schedule therein and shall further conduct and complete the actions required in the approved Statement of Work in accordance with the

Statement of Work and schedules.

8.12 Upon Respondent Leonard Goldfine's completion of the activities required of him in Paragraphs 8.2 through 8.10 above, he shall submit to EPA a letter certifying that he has completed all such activities. The certification shall be in the following form:

"I certify that the information contained in or accompanying this letter is true, accurate and complete."

Signature _____

8.13 Respondent Leonard Goldfine shall provide to EPA upon request any and all information resulting from and/or pertaining to action taken by him pursuant to this Order including, but not limited to, analytical data, Site safety data, Site monitoring data, operational logs, copies of all hazardous waste manifests (including copies of all hazardous waste manifests signed upon receipt of the hazardous wastes by a licensed treatment, storage or disposal facility, identities of treatment, storage and/or disposal facilities used, identities of transporters used, and identities of any contractors and subcontractors used). Nothing herein shall be interpreted as limiting the inspection authority of EPA under Federal law.

8.14 Within ten (10) calendar days of the completion of all of the actions required in the approved Statement of Work, Respondent Leonard Goldfine shall submit a written report to EPA detailing the actions taken, and notifying EPA of such completion. EPA will inspect the Site for adequacy of his performance of such actions. EPA will notify him, in writing, of any deficiencies and the actions required to correct these deficiencies at the Site. Such required actions shall be consistent with the NCP and all applicable Federal laws or regulations. Respondent Leonard Goldfine shall take the necessary corrective measures to address any deficiencies identified by EPA.

8.15 In the event that Respondent Leonard Goldfine fails or refuses to comply with any requirements of this Order, EPA may undertake such measures in lieu of him, and may take any other measures authorized by law which EPA determines may be necessary to protect public health, welfare or the environment. EPA retains the authority to take enforcement actions, including actions for monetary penalties, for any violation of law, regulation, or of this Order. Such enforcement actions may include actions for violations of this Order pursuant to Sections 106(b)(1) and 113(b) of CERCLA, 42 U.S.C. §§ 9606 (b)(1) and 9613(b). Failure to comply with this Order or any portion hereof without sufficient cause also may subject Respondent Leonard Goldfine to civil penalties of up to \$25,000 a day and/or

punitive damages in an amount up to three times the amount of any costs incurred by the United States as a result of such failure, pursuant to Sections 106(b) and 107(c) of CERCLA, 42 U.S.C. §§ 9606(b) and 9607(c).

IX. DESIGNATED PROJECT COORDINATORS

9.1 Within five (5) days of the effective date of this Order, Respondent Leonard Goldfine shall designate a Project Coordinator and shall notify EPA of this designation. The Project Coordinator for EPA is:

Christopher P. Thomas, Enforcement Project Manager (EPM)
Enforcement and Title III Section (3HW33)
U.S. EPA, Region III
841 Chestnut Building, 6th Floor
Philadelphia, PA 19107
Phone: 215/597-4458 or 625-0744

The On-Scene Coordinator is:

George English, EPA-OSC
Eastern Removal Section (3HW31)
U.S. EPA Region III
841 Chestnut Building, 6th Floor
Philadelphia, PA 19107
Phone: 215/597-1399 or 625-0744

9.2 Each Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between the Respondents and EPA, and all documents, including reports, approvals, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed to the Project Coordinators by certified mail.

9.3 EPA and Leonard Goldfine shall each have the right to change their respective Project Coordinator(s). Such a change shall be accomplished by notifying the other party in writing at least three (3) days prior to the change.

9.4 The EPA-designated Project Coordinator and EPA's On-Scene Coordinator (OSC) shall have the authority to, inter alia, halt, modify, conduct, or direct any tasks required by this Order and/or undertake any response actions or portions thereof when conditions present or may present a threat to public health or welfare or the environment as set forth in 40 C.F.R. Section 300.65(b). The absence of the EPA Project Coordinator or the EPA OSC from the Site shall not be cause for the stoppage or delay of work.

9.5 The Administrative Record for this Order is in the custody of the EPA Project Coordinator and said record will be made available for inspection upon reasonable request.

X. QUALITY ASSURANCE

10.1 Leonard Goldfine shall use quality assurance, quality control, and chain of custody procedures in accordance with the "EPA NEIC Policies and Procedures Manual" dated May 1978, revised November 1984, EPA Document 330/9-78-001-R and "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," December 1980, QAMS-005/80, while conducting all sample collection and analysis activities at the Site.

XI. SITE ACCESS

11.1 As of the effective date of this Order, pursuant to the provisions of Sections 104(e) and 106(a) of CERCLA, 42 U.S.C. §§9604(e) and 9606(a), Edmund Zakrocki and EZ Chemical shall provide EPA and/or its authorized representatives and Leonard Goldfine and his representatives access to enter and freely move about the Site at all reasonable times for the purpose of, inter alia: conducting the work required under the terms of this Order, inspecting records, operating logs, and contracts related to the Site; reviewing the progress of Respondent Leonard Goldfine in carrying out the terms of this Order; conducting such tests as EPA deems necessary; using a camera, sound recording or other documentary type equipment, and verifying the data submitted to EPA by Leonard Goldfine. Edmund Zakrocki and EZ Chemical shall permit EPA to inspect and copy all records, files, photographs, documents and other writing, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order, or other information (as defined in Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2)). Nothing herein shall be interpreted as limiting the inspection authority of EPA under Federal law.

XII. EPA RESERVATION OF RIGHTS

12.1 EPA reserves all rights and defenses it may have, and nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, including the right to seek injunctive relief, and imposition of statutory penalties.

12.2 As provided by this Order, EPA expressly reserves its right to disapprove of work performed by Leonard Goldfine and reserves its right to request that he perform response actions in addition to those required by this Order, if it determines that such actions are necessary. In the event that he declines to perform such additional actions, EPA reserves the right to undertake such actions and seek reimbursement of its costs. In addition, EPA

reserves the right to undertake removal and/or remedial actions at any time that such actions are appropriate under the NCP and seek reimbursement for any costs incurred.

XIII. NOTIFICATION OF DELAY

13.1 Respondent Leonard Goldfine, through his Project Coordinator, shall notify EPA of any delay or anticipated delay in achieving compliance with any requirement of this Order. Such notification shall be made verbally as soon as possible but not later than two (2) business days after any such delay or anticipated delay and in writing no later than seven (7) days after Leonard Goldfine becomes aware of such delay or anticipated delay. The written notice shall describe fully the nature of the delay, the reasons the delay is beyond his control if appropriate, the actions that will be taken to mitigate, prevent and/or minimize further delay, the anticipated length of the delay and the timetable according to which the actions to mitigate, prevent and/or minimize the delay will be taken. Respondent Leonard Goldfine shall adopt all reasonable measures to avoid or minimize any such delay.

XIV. OTHER CLAIMS

14.1 Nothing in this Order shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation not bound by this Order for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Site.

14.2 This Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

XV. OTHER APPLICABLE LAWS

15.1 All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations.

XVI. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

16.1 The effective date of this Order shall be the date on which it is signed by EPA.

16.2 Any reports, plans, specifications, schedules, or other submissions required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved reports, plans, specifications, schedules, or other

submissions shall be considered non-compliance with the requirements of this Order.

16.3 No informal advice, guidance, suggestions or comments by EPA regarding reports, plans, specifications, schedules, or other submissions by the Respondents or the requirements of this Order will be construed as relieving the Respondents of their obligation to obtain formal approval when required by this Order.

XVII. LIABILITY OF THE UNITED STATES GOVERNMENT

17.1 Neither the United States Government nor any agency thereof shall be liable for any injuries or damages to persons or property resulting from acts or omissions of any of the Respondents herein, or of their employees, agents, servants, receivers, successors, or assignees, or of any persons, including, but not limited to firms, corporations, subsidiaries, contractors, or consultants, in carrying out activities pursuant to this Order, nor shall the United States Government or any agency thereof be held as a party to any contract entered into by Respondents in carrying out activities pursuant to the order.

XVIII. CERTIFICATION OF COMPLIANCE

18.1 Any notice, report, certification, data presentation, or other document submitted by any Respondent under or pursuant to this Order, which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondent Leonard Goldfine's compliance or non-compliance with any requirement(s) of this Order shall be certified by him as set forth in paragraph 18.2, below.

18.2 The certification of compliance required by this section shall be in the following form:

"I certify that the information contained in or accompanying this (specified type of submission) is true, accurate and complete".

Signature: _____
Name(print): _____
Title: _____
(if applicable)

XIX. NOTICE OF INTENTION TO COMPLY

19.1 Prior to or when Leonard Goldfine contacts EPA as described in Paragraph 8.3 above, he shall notify the EPA Project Coordinator in writing of his intention to comply with the terms of this Order.

19.2 Not later than two (2) business days from their receipt of this Order, Respondents may confer with EPA to discuss this Order, including its applicability, the findings upon which this Order is based, the appropriateness of any action or activity requested to be undertaken herein, or other issues directly relevant to the issuance of this Order. Such conference is not an adversarial hearing or part of a proceeding to challenge this Order.

XX. CALCULATION OF TIME

20.1 Any reference to "days" in this Order shall mean calendar days, unless otherwise specifically provided herein.

XXI. TERMINATION AND SATISFACTION

21.1 The Respondents' obligation to EPA under this Order shall terminate and be deemed satisfied upon the Respondents' receipt of written notice from EPA that the Respondents have demonstrated, to the satisfaction of EPA, that all the terms of this Order have been completed.

BY: Edwin B. Erickson

Edwin B. Erickson
Regional Administrator
Region III
U.S. Environmental Protection Agency

Date: 1/12/90

KERMIT RADER

MANKO, GOLD & KATCHER

3RIN- 183 -90

SUBJECT FREEDOM OF INFORMATION

DATE RECEIVED

LISTED INFO RE: EZ CHEMICAL SITE

01/24/90

DATE DUE

02/07/90

REFERRED TO

3HW00

REMARKS

CHRIS PILLA

NOTE: SEND COPY OF RESPONSE LETTER ONLY TO BARBARA BROWN PUBLIC AFFAIRS.

LAW OFFICES
MANKO, GOLD & KATCHER

SUITE 400
1000 MARKET STREET
PHILADELPHIA, PA 19103

JOSEPH M. MANKO
MARC E. GOLD
BRUCE S. KATCHER
KERMIT L. KADER
MICHAEL M. MELOY
ROBERT D. FOX
STEVEN T. MIANO
KENNETH C. GOLD
MARGIE BANET
JONATHAN E. RINDE

EX-100 (MPT) (1-1-80)

(215) 622-7100
FAX (215) 622-7111

January 17, 1990

*P. Mr. Governor
C. Filla*

HAND DELIVERY

Mr. Christopher P. Thomas
U.S. Environmental Protection Agency
Region III
Enforcement and Title III
Section (3HW33)
841 Chestnut Building
Philadelphia, PA 19107

Re: Administrative Order III-90-07-DC

Dear Chris:

I am writing on behalf of our client Leonard Goldfine in accordance with the Administrative Order No. III-90-07-DC (the "AO"), issued to Leonard Goldfine, Edmund Zakrocki and E.Z. Chemical Company, the effective date of which is January 12, 1990. In particular, this letter is submitted in accordance with:

(1) paragraph 8.3, which provides that the Respondent contact EPA within two business days of receipt of the AO (or January 17, 1990) to obtain information necessary to complete required work,

(2) paragraph 9.1, which provides that the Respondent designate a Project Coordinator within five days of the effective date of the AO (or January 17, 1990), and

(3) paragraph 19.2, which requires that any conference relating to the AO be held within two days of its receipt (or January 17, 1990).

By this letter, I am requesting the information referred to in paragraph 8.3 and a conference as provided by paragraph 19.2. Since the information referred to in paragraph 8.3 has not yet been provided, and for other reasons set forth below, Leonard Goldfine is not in a position to comply with Paragraph 9.1.

As an initial matter, I must express my shock with regard to the fact that the AO was issued without any indication being given to my client that such an order was being developed or any opportunity being provided to explore the possibility of a

Mr. Christopher P. Thomas
January 17, 1990
Page 2

consent order. The Agency's conduct in this matter flies in the face of ordinary professional courtesy and due process, and is highly prejudicial. Given the extremely short deadlines in the AO, even if prior notice had been given to Mr. Goldfine, compliance with the terms of the AO would have been quite difficult. This is particularly true for an individual such as Leonard Goldfine who (1) is not now and has never been in or associated with any business which involves handling of hazardous materials and (2) is therefore unfamiliar with remedial contractors. In the absence of reasonable notice, it is simply impossible for Mr. Goldfine to designate a Project Coordinator with two business days, or submit a "complete and detailed scope of work" within seven business days of receipt of the AO.

As I have indicated in prior correspondence there are no facts which provide any basis for considering Leonard Goldfine to be a potentially responsible party with respect to the EZ Chemical Site. The AO merely states in a conclusory fashion that Mr. Goldfine was an "owner or operator" of the EZ Chemical Site. The characterization of Mr. Goldfine as having had personal involvement and participation with the site is false and unsupported by any findings of fact in the AO.

Leonard Goldfine's only involvement with the EZ Chemical Site is as the former holder of stock in corporations which previously owned the property and as the property's present mortgage holder. Neither Mr. Goldfine nor the Laurel Street Corporation or 950 Canal Street Corporation have ever had any involvement in or authority with respect to the management of Packaging Terminals, Inc. or EZ Chemicals, Inc.. The fact that Leonard Goldfine was aware of the general nature of the businesses conducted by those entities does not make him an "owner or operator" of the EZ Chemical Site.

The leases between the Laurel Street and 950 Canal Street Corporations as lessors and Packaging Terminals and EZ Chemicals as lessees specifically required that the lessees' businesses be conducted in accordance with law. Mr. Goldfine has no record of having received the summons referred to in paragraph 3.7; in any event, Mr. Goldfine has never taken any actions at the EZ Chemical Site relating to the handling of drums of chemicals. Finally, the financial arrangement referred to in paragraph 3.9 was solely a means whereby Packaging Terminals, Inc. was to satisfy Leonard Goldfine's claim for back rent, for which, as indicated in paragraph 2(a) of the referenced agreement, Packaging Terminals was indebted in the amount of \$44,000.

Mr. Christopher P. Thomas
January 17, 1990
Page 3

Even if Leonard Goldfine were a potentially responsible party with respect to that Site, which is specifically denied, he lacks sufficient funds to perform or pay for the cleanup of the EZ Chemical Site. Although we continue to believe that Mr. Goldfine's financial situation is of no relevance to EPA's inquiry with respect to the EZ Chemical Site, as a means of responding to the AO, and specifically reserving our position with regard to the relevance of the information, we are providing Mr. Goldfine's most recent tax return, which demonstrates his inability to perform or pay for the cleanup of the EZ Chemical Site in the manner required by the AO. Please note that the return is a joint return and therefore reflects income derived from assets held by Beatrice Goldfine.

In addition, please consider this letter to be a request pursuant to the Freedom of Information Act, for all information in the possession of EPA pertaining to potentially responsible parties with respect to the EZ Chemical Site, including specifically all information relating to or indicating (1) generators of materials disposed at the Site, (2) efforts being made to have such generators cleanup any materials they disposed at the EZ Chemical Site, and (3) the alleged liability of Leonard Goldfine in his individual capacity as an "owner or operator" of the site. FOIA
Region

Notwithstanding the foregoing, as noted above we feel that a conference in accordance with paragraph 19.2 of the AO would be mutually beneficial. I will contact you later this week to try to arrange a time for such conference.

Very truly yours,

Kermit L. Rader

Kermit L. Rader
For MANKO, GOLD & KATCHER

KLR/ds

cc: Leonard Goldfine
Joseph M. Manko
Barbara Brown, Region III, FOIA Coordinator

*Notify of
fee costs*